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10 GORDIAN MEDICAL, INC., d/b/a
AMERICAN MEDICAL TECHNOLOGIES

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF NEVADA**

13 VOHRA WOUND PHYSICIANS
14 MANAGEMENT, LLC, a Delaware limited
liability company,

15 Plaintiff,

16 v.

17 GORDIAN MEDICAL, INC., d/b/a
18 AMERICAN MEDICAL TECHNOLOGIES,
a Nevada corporation; SUZETTE HOYT, an
19 individual; and DOES I through X, inclusive,

20 Defendants.

21 GORDIAN MEDICAL, INC., d/b/a
22 AMERICAN MEDICAL TECHNOLOGIES,
a Nevada corporation,

23 Counter-Claimant,

24 v.

25 VOHRA WOUND PHYSICIANS
26 MANAGEMENT, LLC, a Delaware limited
liability company,

27 Counter-Defendant.
28

Case No. 2:19-cv-01825

**DEFENDANT AND COUNTER-
CLAIMANT GORDIAN MEDICAL, INC.
D/B/A AMERICAN MEDICAL
TECHNOLOGIES' ANSWER TO
COMPLAINT AND COUNTERCLAIM
FOR DAMAGES AND INJUNCTIVE
RELIEF**

JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

Pursuant to Federal Rule of Civil Procedure 12, Defendant Gordian Medical, Inc. dba American Medical Technologies (“Gordian”), answering for itself and no others, hereby submits the following Answer and defenses in response to the allegations in Plaintiff Vohra Wound Physicians Management, LLC’s (“Vohra”) Complaint.

This Answer is based on Gordian’s reasonable inquiry and knowledge to date. Gordian reserves its right to amend, supplement, clarify or correct the responses set forth below as additional information becomes available to it.

In response to the numbered Paragraphs of the Complaint, Gordian hereby responds as follows:

1. Gordian admits the allegations in Paragraph 1.
2. Gordian admits the allegations in Paragraph 2.
3. Gordian admits the allegations in Paragraph 3.
4. Gordian admits the allegations in Paragraph 4.
5. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and on that basis denies them.
6. Gordian admits the allegations in Paragraph 6.
7. Gordian denies the allegations in Paragraph 7.
8. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and on that basis denies them.
9. Gordian denies the allegations in Paragraph 9.
10. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and on that basis denies them.
11. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and on that basis denies them.
12. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and on that basis denies them.
13. Gordian admits the allegations in paragraph 13, including the allegation that

1 patients are not required to use surgical wound dressings from Vohra's Program, but Gordian
2 notes that at times Vohra has falsely represented to facilities that they were required to use
3 wound dressings from the Program.

4 14. Gordian lacks knowledge or information sufficient to form a belief as to the truth
5 of the allegations in Paragraph 14 and on that basis denies them.

6 15. Gordian lacks knowledge or information sufficient to form a belief as to the truth
7 of the allegations in Paragraph 15 and on that basis denies them.

8 16. Gordian admits the allegations in Paragraph 16.

9 17. Gordian admits the allegations in Paragraph 17.

10 18. Gordian denies the allegations in Paragraph 18.

11 19. Gordian denies the allegations in Paragraph 19.

12 20. Gordian denies that it made any false or defamatory statements as alleged in
13 Paragraph 20. Gordian lacks knowledge or information sufficient to form a belief as to truth of
14 the allegations in Paragraph 20 that nursing facilities, physicians, and patients around the country
15 have stopped accepting, ordering or using Plaintiff's wound dressings, but if true, Gordian denies
16 that it is responsible for Plaintiff's lost business.

17 21. Gordian lacks knowledge or information sufficient to form a belief as to the truth
18 of the allegations in Paragraph 21 and on that basis denies them.

19 22. Gordian admits that its representative, Susette Hoyt, was at the Lindan Park Care
20 Center in Richardson Texas on or about August 16, 2019, and that Ms. Hoyt had a conversation
21 with representatives at the facility regarding wound dressings, but Gordian denies that Ms. Hoyt
22 said the things alleged in Paragraph 22. Rather, after Ms. Hoyt discovered that Plaintiff had
23 begun ordering wound dressings and supplies for patients without notifying anyone at the
24 facility, she expressed concern that Plaintiff's actions created a potential for double billing as
25 Gordian had a contract with the facility to supply wound dressings for the patients in the facility,
26 and if the facility is not informed that Plaintiff was ordering supplies, both could be billed to
27 Medicare and that double billing could be fraudulent if not rectified. Thereafter, although it had
28 supplied dressings at its sole expense, Gordian issued a credit to Medicare to avoid any

possibility of double billing. Gordian denies the remaining allegations in Paragraph 22.

23. Gordian denies the allegations in Paragraph 23.

24. Gordian denies that it made any false or defamatory statements as alleged in Paragraph 24. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24 and on that basis denies them.

25. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 25 that customers “have previously advised Plaintiff that they found [Program surgical wound dressings] to be superior to other surgical wound dressings dispensed by other suppliers,” and on that basis denies it. Gordian denies all remaining allegations in Paragraph 25.

26. Gordian incorporates its response to Paragraphs 1 through 25.

27. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 and on that basis denies them.

28. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and on that basis denies them.

29. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and on that basis denies them.

30. Gordian denies the allegations in Paragraph 30.

31. Gordian denies the allegations in Paragraph 31.

32. Gordian denies the allegations in Paragraph 32.

33. Paragraph 33 contains legal conclusions to which no response is required. To the extent a response is deemed required, Gordian denies the allegations in Paragraph 33.

34. Gordian denies the allegations in Paragraph 34.

35. Gordian denies the allegations in Paragraph 35.

36. Gordian specifically denies that it engaged in any unlawful or wrongful conduct and therefore denies the allegations in paragraph 36 to the contrary. Gordian lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 36 and on that basis denies them.

1 37. Gordian specifically denies that it has engaged in any conduct that is unlawful or
2 wrongful. Gordian lacks knowledge or information sufficient to form a belief as to the truth of
3 the remaining allegations in Paragraph 37 and on that basis denies them.

4 38. Gordian denies it has engaged in any conduct that is unlawful or wrongful,
5 and denies that Plaintiff has suffered or will continue to suffer any damages or harm to its
6 business, reputation or goodwill as a result of Gordian's actions as alleged in the complaint, and
7 therefore Gordian denies the allegations in Paragraph 38.

8 39. Gordian denies it has engaged in any conduct that is unlawful or wrongful, and
9 denies the remaining allegations in Paragraph 39.

10 40. Gordian incorporates its response to Paragraphs 1 through 39.

11 41. Gordian denies the allegations in Paragraph 41, and specifically denies that it
12 made false and disparaging statements.

13 42. Gordian denies the allegations in Paragraph 42, and specifically denies that it
14 made false and disparaging statements.

15 43. Gordian denies the allegations in Paragraph 43, and specifically denies that it
16 made false and disparaging statements.

17 44. Gordian denies the allegations in Paragraph 44.

18 45. Gordian denies the allegations in Paragraph 45.

19 46. Gordian denies that Plaintiff has suffered or will continue to suffer any damages
20 or harm to its business, reputation or goodwill as a result of any statements made by Gordian,
21 and denies that it made any false or disparaging statements. Gordian denies any remaining
22 allegations in Paragraph 46.

23 47. Paragraph 47 contains legal conclusions to which no response is required. To the
24 extent a response is deemed required, Gordian denies the allegations in Paragraph 47.

25 48. Gordian incorporates its response to Paragraphs 1 through 47.

26 49. Gordian denies the allegations in Paragraph 49, and specifically denies that it
27 made false and defamatory statements.

28 50. Gordian denies the allegations in Paragraph 50, and specifically denies that it

1 made false and defamatory statements.

2 51. Gordian denies the allegations in Paragraph 51, and specifically denies that it
3 made false and defamatory statements.

4 52. Gordian denies that it made any false statements as alleged in the Complaint.
5 Gordian lacks knowledge or information sufficient to form a belief as to the truth of the
6 remaining allegations in Paragraph 52 and on that basis denies them.

7 53. Paragraph 53 contains legal conclusions to which no response is required. To the
8 extent a response is deemed required, Gordian denies the allegations in Paragraph 53, and
9 Gordian specifically denies that it made any false statements as alleged in the Complaint.

10 54. Gordian denies the allegations in Paragraph 54, and Gordian specifically denies
11 that it made any false statements as alleged in the Complaint.

12 55. Gordian denies the allegations in Paragraph 55.

13 56. Gordian denies that Plaintiff has suffered or will continue to suffer any damages
14 or harm to its business, reputation or goodwill as a result of any statements made by Gordian,
15 and Gordian denies that it made any false or disparaging statements. Gordian denies any
16 remaining allegations in Paragraph 56.

17 57. Paragraph 57 contains legal conclusions to which no response is required. To the
18 extent a response is deemed required, Gordian denies the allegations in Paragraph 57.

19 58. Gordian incorporates its responses to Paragraphs 1 through 57.

20 59. Gordian admits that it is a competitor of Vohra for wound dressings, and denies
21 all remaining allegations in Paragraph 59.

22 60. Gordian denies that Plaintiff has suffered or will continue to suffer any damages
23 or harm to its business, reputation or goodwill as a result of any statements made by Gordian,
24 and Gordian denies that it made any false or defamatory statements. Gordian denies any
25 remaining allegations in Paragraph 60.

26 61. Paragraph 61 contains legal conclusions to which no response is required. To the
27 extent a response is deemed required, Gordian denies the allegations in Paragraph 61.

28 62. Gordian incorporates its response to Paragraphs 1 through 61.

1 63. Gordian admits that it is a competitor of Vohra for wound dressings, and denies
2 all remaining allegations in Paragraph 63.

3 64. Gordian denies that it made any misrepresentations about Vohra. Gordian denies
4 all remaining allegations in Paragraph 64.

5 65. Paragraph 65 contains legal conclusions to which no response is required. To the
6 extent a response is deemed required, Gordian denies the allegations in Paragraph 65.

7 66. Gordian lacks knowledge or information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 66, and on that basis denies them.

9 67. Gordian denies that Plaintiff has suffered or will continue to suffer any damages
10 or harm to its business, reputation or goodwill as a result of any statements made by Gordian,
11 and Gordian denies that it made any false descriptions of fact or false representations of fact.
12 Gordian denies any remaining allegations in Paragraph 67.

13 68. Gordian incorporates its response to Paragraphs 1 through 67.

14 69. Paragraph 69 contains legal conclusions to which no response is required. To the
15 extent a response is deemed required, Gordian denies the allegations in Paragraph 69.

16 70. Paragraph 70 contains legal conclusions to which no response is required. To the
17 extent a response is deemed required, Gordian denies that Plaintiff has suffered or will continue
18 to suffer any damages or harm to its business, reputation or goodwill as a result of Gordian's
19 actions as alleged in the complaint. Gordian denies any remaining allegations in Paragraph 70.

20 71. Gordian incorporates by reference its response to Paragraphs 1 through 70.

21 72. Gordian denies the allegations in Paragraph 72.

22 73. Gordian denies the allegations in Paragraph 73.

23 74. Paragraph 74 contains legal conclusions to which no response is required. To the
24 extent a response is deemed required, Gordian denies the allegations in Paragraph 74.

25 75. Paragraph 75 contains legal conclusions to which no response is required. To the
26 extent a response is deemed required, Gordian denies the allegations in Paragraph 75.

27 76. Paragraph 76 contains legal conclusions to which no response is required. To the
28 extent a response is deemed required, Gordian denies the allegations in Paragraph 76

1 **PRAYER FOR RELIEF**

2 Gordian denies that Plaintiff is entitled to any of the requested relief, or any other relief
3 whatsoever in this Action, including the relief set forth in the Prayer for Relief and its Paragraphs
4 a–g therein. Gordian prays that the Court enter judgment in its favor and award it such other and
5 further relief to which it may be entitled.

6 **AFFIRMATIVE DEFENSES**

7 As separate and distinct defenses to Plaintiff's alleged causes of action, and without
8 assuming any burden of pleading or proof that would otherwise rest on Plaintiff, Gordian alleges
9 as follows:

10 This statement of defenses is based on Gordian's investigation to date, and Gordian
11 expressly reserves all rights to re-evaluate its defenses and/or assert additional defenses upon
12 discovery and review of additional documents and information, upon the development of other
13 pertinent facts, and during pretrial proceedings in this action. By designating the below
14 defenses, Gordian does not in any way waive or limit any defenses which are or may be raised
15 by its denials, allegations, and averments. These defenses are pled in the alternative, and are
16 raised to preserve the rights of Gordian to assert such defenses, and are without prejudice to its
17 ability to raise other and further defenses.

18 **FIRST DEFENSE**

19 **(Failure to State a Claim)**

20 Plaintiff's claims are barred because the Complaint fails to state a claim on which relief
21 may be granted.

22 **SECOND DEFENSE**

23 **(Truth)**

24 Plaintiff's claims are barred because all of Gordian's conduct and statements were
25 truthful when made.

26 **THIRD DEFENSE**

27 **(Unclean Hands)**

28 Plaintiff's claims are barred by the doctrine of unclean hands, as demonstrated by

1 Plaintiff's conduct detailed in the attached Counterclaim.

2 **FOURTH DEFENSE**

3 **(Waiver)**

4 By their own actions and omissions, Plaintiff has waived its claims or rights against
5 Gordian in this case.

6 **FIFTH DEFENSE**

7 **(Estoppel)**

8 By its own actions and omissions, Plaintiff is, in whole or in part, estopped from asserting
9 claims against or obtaining damages or other relief against Gordian in this case, because, among
10 other reasons, Plaintiff (1) had knowledge of the alleged conduct that formed the basis of its
11 claims, yet failed to inquire as to whether Gordian engaged in the conduct or made the
12 statements alleged and/or to complain or otherwise demand Gordian change any behavior; and
13 (2) Plaintiff engaged in the same or similar behavior in which it now accuses Gordian of
14 engaging.

15 **SIXTH DEFENSE**

16 **(Failure to Mitigate Damages)**

17 Plaintiff's claims for damages are barred, in whole or in part, because Plaintiff did not
18 mitigate its alleged damages or losses, if there were any damages or losses.

19 **SEVENTH DEFENSE**

20 **(Doctrine of Avoidable Consequences)**

21 Some or all of the causes of action or damages alleged in the Complaint are barred, or
22 recovery should be reduced, under the doctrine of avoidable consequences, because Plaintiff's
23 claimed damages, if any, could have been avoided by reasonable effort or expenditure.

24 **EIGHTH DEFENSE**

25 **(Offset)**

26 Any damages awarded to Plaintiff must be offset and reduced by the amount owed
27 Plaintiff to Gordian as a result of Plaintiff's wrongful conduct as alleged in the Counterclaim
28 filed herewith.

1 **NINTH DEFENSE**

2 **(Adequate Legal Remedies)**

3 To the extent Plaintiff seeks equitable relief against Gordian, they are not entitled to that
4 relief because they have adequate remedies at law.

5 **TENTH DEFENSE**

6 **(Gordian's Good Faith and Lawful Business Practices)**

7 Plaintiff's unfair business practices claim is barred because all actions by Gordian were
8 taken for lawful business reasons and in good faith.

9 **ELEVENTH DEFENSE**

10 **(Lack of Standing)**

11 Plaintiff is barred from any recovery because Plaintiff lacks standing to bring the claims.

12 **TWELFTH DEFENSE**

13 **(Reservation of Rights)**

14 Gordian hereby reserves and reasserts all affirmative defenses available under any
15 applicable state or federal law. Gordian further alleges that discovery has not yet begun, and on
16 this basis, other affirmative defenses may become known or substantiated. Gordian reserves the
17 right to add affirmative defenses within a reasonable time after the facts of said affirmative
18 become known to Gordian.

19 **DEMAND FOR TRIAL BY JURY**

20 Gordian hereby demands trial by jury for all questions for which trial by jury is
21 authorized, both in Vohra's complaint and in Gordian's counterclaim.

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1 DATED: May 11, 2020

KING & SPALDING LLP

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3
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5 By: 

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d/b/a AMERICAN MEDICAL
TECHNOLOGIES

GORDIAN’S COUNTERCLAIM

Counter-Claimant Gordian Medical, Inc. dba American Medical Technologies (“Gordian”) hereby brings this counterclaim against Plaintiff/Counter-Defendant Vohra Wound Physicians Management, LLC (“Vohra”), and alleges as follows:

Jurisdiction

1. This court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because there exists complete diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

2. This court also has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331 as it is alleged that Vohra violated Section 43 of the Lanham Act, 15 U.S.C. § 1125.

Parties

3. Counter-Claimant Gordian is, and at all relevant times was, a Nevada corporation with its principal place of business in Irvine, California. Gordian is an accredited supplier of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (“DMEPOS”) and a participating Medicare Part B provider.

4. Counter-Defendant Vohra is, and at all relevant times was, a Delaware limited liability corporation with its principal place of business in Miramar, Florida.

Background

5. Contrary to the numerous false allegations in Vohra’s complaint, it is Vohra that has engineered a deceptive and fraudulent scheme to interfere with Gordian’s established business relationships as Vohra tries to break in to the field of providing wound care dressing and supplies to Medicare Part B patients at long-term care facilities. But rather than competing fairly, Vohra has built its business model on treachery and deception, ordering supplies without informing anyone that it is doing so and misleading facilities as to Vohra’s role in the supply process. These behaviors often lead to the danger that Gordian, the established provider of these supplies, might unknowingly double-bill Medicare when Gordian orders the supplies it has long been providing.

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1 6. For over 25 years, Gordian has focused its business on working with long-term
2 and post-acute care providers to supply advanced wound care products, and for the past several
3 years, ostomy, urological and tracheostomy products.

4 7. Gordian works with over 6,250 facilities across all 50 states and its products are
5 used in the treatment of over 250,000 wounds every year. The facilities' medical professionals
6 determine what products are needed and Gordian works to facilitate the delivery of cost-
7 effective, quality care to the facilities' residents. Gordian provides educational resources to
8 enhance facility staffs' knowledge and competence in the products Gordian provides. This
9 empowers the bedside provider to improve the quality of care delivered while decreasing the cost
10 of care. Gordian's comprehensive focus helps manage the risks associated with patient care
11 while improving outcomes by using the appropriate products at the appropriate time.

12 8. Gordian's clinical specialists are licensed health care providers, typically nurses,
13 with expertise in long term care programs. In almost all cases, they have completed a
14 comprehensive wound care certification program to provide them the focused, extensive training
15 necessary for their roles as clinical specialists. In short, they possess the talent, resources and
16 education to execute their role as trusted adviser with confidence. Gordian's clinical specialists
17 facilitate the delivery of products, care and support to patients of these facilities.

18 9. Gordian's clinical specialists work with facilities, visiting them regularly, and
19 often rounding with the treating physicians to observe patient care. In this way, the clinical
20 specialists get to know the facilities, the physicians, and the patients. Gordian knows firsthand
21 what the patient needs and what the physician has ordered for wound care dressings and supplies
22 through the relationships its clinical specialists have with the facilities and patients.

23 10. For these reasons, Gordian is able to supply Medicare-covered dressings and
24 order the correct quantity of dressings and supplies needed by each resident for whom services
25 are requested. Gordian's clinical specialists draw on years of clinical experience, knowledge of
26 the patients receiving care, and ultimately the physician's orders to determine how many and
27 what kind of dressings will be needed for each resident for the month. Gordian works with most
28 major manufacturers so that it can ensure the proper supplies are available to fill the residents'

1 needs. Gordian also handles billing the residents' insurance carrier – most often Medicare or
2 Medicaid – so that neither the resident nor the facility need be involved in the complicated area
3 of medical billing.

4 11. Gordian enters into contracts with facilities to be the facilities' preferred provider
5 of Medicare-covered wound care dressings and supplies. Although Gordian generally does not
6 provide supplies for patients covered by Medicare Part A since those supplies are included in the
7 facilities' per diem charges, Gordian can and does provide supplies to patients covered by
8 Medicare Part B and private insurance.

9 12. Vohra claims to be the largest wound care specialty physician group on the post-
10 acute market. Vohra claims it has approximately 250 physicians providing wound care treatment
11 at over 2,500 facilities in 27 states.

12 13. Many of the wound care physicians that treat patients for which Gordian provides
13 wound care supplies are Vohra-affiliated physicians. As such, Vohra is well acquainted with
14 Gordian and Gordian's services. Gordian's clinical specialists have worked cooperatively with
15 Vohra physicians for years.

16 14. Based on the long history of working cooperatively with Gordian, Vohra knew or
17 should have known that Gordian had contractual relationships with its facilities to order, provide,
18 and bill for wound care dressings and supplies the facilities' residents required.

19 15. After watching Gordian and other Medicare-enrolled DMEPOS suppliers order
20 wound dressings for Vohra's patients for years, Vohra devised a plan to increase its own profits
21 and revenue. In late 2017, Vohra created its Wound Care Dressing Dispensing Program.
22 Through this program, Vohra seeks to handle both the wound care medical treatment through its
23 physicians and also market and sell all wound care supplies needed by the resident.

24 16. After Vohra began its Dressing Dispensing Program and began competing with
25 Gordian in the wound dressing and supplies market, the cooperative relationship between the
26 Gordian clinical specialists and the Vohra physicians began to change. Among other things,
27 Vohra's physicians made disparaging, demeaning, and false statements regarding the Gordian
28 and the Gordian clinical specialists in the presence of facility representatives. These statements

1 were intended to denigrate both Gordian and its clinical specialists such that the facility would be
2 hesitant to continue using Gordian's services and ordering wound dressings from Gordian and
3 instead order them from Vohra.

4 17. Gordian is informed and believes that Vohra does not inform many of the
5 facilities that Vohra is ordering wound care supplies for the Vohra physician's patients.
6 However, despite their failure notify the facilities that they are doing so, Vohra physicians have
7 begun ordering wound care dressings and supplies from Vohra's Dressing Dispensing Program.

8 18. Importantly, not all wound care patients in a facility are likely to be Vohra
9 patients – there are likely other wound care physician groups and sometimes facility physicians
10 providing this service in virtually all of the facilities where Vohra physicians treat patients. In
11 fact, Gordian is informed and believes that Vohra physicians only treat patients covered by
12 Medicare Part B. Given that many of the wound care patients are covered by Medicare Part A or
13 private insurance, there are generally other, non-Vohra physicians providing wound care at these
14 facilities. In addition, Gordian is informed and believes that Vohra will only order wound care
15 dressings and supplies for its physicians' patients, and not for any other patients at these
16 facilities. As a result, some facilities have informed Gordian that having the Vohra physicians
17 order supplies for Vohra's patients leads to confusion at the facility as to who is ordering
18 supplies for which residents and how the patients' care is being effectively managed. On the
19 other hand, Gordian generally can and does order and provide dressings and supplies for many
20 residents other than just Medicare Part A and Part B patients and is capable of providing
21 comprehensive care services for all facility patients requiring care.

22 19. Gordian clinical specialists have arrived at facilities on their regular visits to find
23 Vohra-ordered dressings and supplies already in the patients' rooms. When asked, the facilities'
24 nursing and administrative staff have told the Gordian clinical specialists that they did not know
25 Vohra ordered or furnished them, and they thought they had been furnished by Gordian. In
26 many cases, Gordian had already ordered or furnished the new months' supplies based on a
27 physician's order before learning that Vohra had already furnished similar supplies without
28 informing the facility or the other ordering physician(s). In other cases, after incurring the travel

1 and payroll expenses of sending a clinician to a facility, Gordian was precluded from furnishing
2 ordered supplies because Vohra had already done so, often without any authorization from the
3 facility or the patient.

4 20. Moreover, Gordian is informed and believes that in many, if not all, cases, in
5 willful disregard of Gordian's contractual relationship with the facility and existing relationship
6 with the facility and patient, Vohra physicians have simply ordered, without the knowledge,
7 consent, or desire of the facility or patient, additional surgical wound dressing supplies that
8 Gordian was already supplying as supplier of record. Vohra has also done this in willful
9 disregard of any double billing to Medicare or other payers that Vohra's conduct may cause.

10 21. Gordian is informed and believes that in addition to ordering the supplies, Vohra
11 also bills Medicare for the supplies and receives and keeps the payment from Medicare.

12 22. The fact that Vohra does not inform the facility or the patients (or their
13 caregivers) that it is ordering dressings and supplies for its patients can cause Gordian to bill
14 Medicare for dressings and supplies that had already been ordered with Gordian for treatment of
15 the patient, even though Vohra had already ordered and furnished them. Medicare bills require a
16 physician's signature before they can be submitted. Because Vohra's physician signs the request
17 immediately, Vohra is able to submit its bills without delay. Gordian routinely has to wait for up
18 to 30 days to obtain the written record with a treating physician's signature, which means that
19 Gordian's bills to Medicare will always be submitted after Vohra's. If Vohra has already
20 submitted a bill, this could result in Gordian unknowingly submitting a double bill to Medicare, a
21 violation of federal law and CMS regulations.

22 23. In addition, Gordian is informed and believes that when facilities told Vohra that
23 Gordian was supplying dressings and supplies for the residents in the facility with the consent of
24 each of the patients (or their caregivers), Vohra falsely told the facility that Gordian was not
25 coming back to the facility.

26 24. Vohra has also told Gordian's clinical specialists that they are no longer permitted
27 to round with the Vohra physician. This is harmful to patient care and makes it more difficult for
28 Gordian's clinical specialists to order the proper wound care dressings and supplies. There is no

1 medical or patient care benefit to Vohra refusing to allow the Gordian clinical specialist to round
2 with the physician; rather, it only serves as anti-competitive behavior to prevent Gordian from
3 being able to carry out its contractual duties and attempting to usurp the services of Gordian.

4 25. Gordian is informed and believes that another tactic Vohra has begun using is to
5 unlawfully misrepresent to facilities that participation in Vohra's Dressing Dispensing Program
6 is required to maintain services from Vohra's physicians, exploiting the facilities' existing
7 relationships with Vohra physicians and the need for wound care physician services. In this way,
8 Vohra attempts to coerce and intimidate the facility into ordering supplies from Vohra rather
9 than from Gordian in an unlawful and unfair attempt to disrupt Gordian's established contractual
10 relationships with these facilities.

11 26. Gordian is also informed and believes that Vohra filed a complaint with the CMS
12 Office of Inspector General falsely claiming that Gordian had been ordering excessive dressings
13 and supplies in an attempt to harm Gordian and to convince facilities to stop doing business with
14 Gordian. Vohra has made similar false and defamatory statements to administrators at various
15 facilities, accusing Gordian of ordering "an excessive, unnecessary and wasteful amounts" of
16 dressings and wound care supplies.

17 27. Gordian is informed and believes that Vohra has been calling facilities that
18 contract with Gordian and falsely stating that the facility cannot force the resident to obtain
19 wound care dressings and supplies from Gordian, and that Vohra physicians have the right to
20 order dressings and supplies from Vohra's Dressing Dispensing Program. Further, when the
21 facility demands that Vohra stop ordering supplies through its program, Vohra falsely tells the
22 facility that the facility must give Vohra 90-days' notice before it can cancel the program, even
23 though the facility never agreed to use the program to begin with.

24 28. Gordian also has become aware of numerous defamatory and disparaging
25 statements made by Vohra and Vohra representatives. For example, as part of a high-pressure
26 sales pitch, a Vohra representative told administrators in at least one facility that Gordian could
27 not be trusted, and described in detail the lawsuit Vohra had filed against Gordian.

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29. Gordian is informed and believes that Vohra offers its physicians monetary bonuses or incentives for each facility that the physician persuades to place orders for wound care dressings and supplies through Vohra's Dressing Dispensing Program. Vohra's financial arrangements with its physicians may therefore violate federal and state anti-kickback laws.

30. The Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), prohibits persons from offering, paying, soliciting or receiving any remuneration that is intended to induce referrals, purchase, or orders of items or services reimbursed by a federal health care program. Many states have similar statutes.

31. The purpose of Vohra's monetary bonuses or incentives is to increase referrals, i.e., orders through its Dressing Dispensing Program, by whatever means necessary, including but not limited to interfering with Gordian's relationships with its customers.

32. Upon information and belief, the facilities targeted by Vohra for its Dressing Dispensing Program do not have any knowledge or involvement in Vohra's unlawful kickbacks to its physicians.

33. Vohra's unlawful practices that make its Dressing Dispensing Program attractive to facilities are essential to its plan to frustrate fair competition and have damaged Gordian.

34. Gordian has lost business to Vohra both when Vohra orders supplies without the facilities' knowledge or authorization, and when Vohra persuades a facility to break its contract with Gordian to purchase wound care dressings and supplies instead from Vohra.

First Claim

Tortious Interference with Contractual Relations

35. Gordian realleges and incorporates by reference each of the allegations in Paragraphs 1 through 34 as if fully set forth herein.

36. Gordian has contracts with thousands of facilities across the country, including many, if not all, of the facilities in which Vohra provides wound care physicians. Gordian works diligently to maintain those contractual relationships, and is constantly working to establish contractual relationships with new facilities.

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37. Vohra was and is aware of Gordian's contractual relationships with these facilities.

38. Vohra has interfered with the relationships between Gordian and its current facilities by, among other things, making disparaging, demeaning and false statements to denigrate Gordian and Gordian's clinical specialists, ordering wound care dressings and supplies without authorization when Gordian had in place contracts to provide those dressings to residents of those facilities, using coercive tactics and unlawful and unfounded threats designed to induce those facilities to break their contracts with Gordian and instead order wound care dressings and supplies from Vohra's Dressing Dispensing Program, falsely claiming that Gordian was ordering excessive dressings and supplies, and providing its physicians illegal monetary incentives to order dressings in violation of anti-kickback statutes.

39. Vohra's actions are improper, intentional, malicious, unjustified, and made with the purpose of inducing facilities to terminate or not continue their respective contractual relationships with Gordian.

40. Vohra was and is aware that Gordian and these facilities are, or were, likely to do business with each other in the future, and that Gordian anticipates, or anticipated, receiving continued business from these facilities.

41. As a direct result of Vohra's unjustified interference with Gordian's contractual relations, Gordian has suffered substantial monetary and non-monetary harm exceeding \$75,000, including actual damages from lost business, damage to its reputation, and loss of goodwill. Gordian is entitled to all remedies available under the law as set forth in its Prayer for Relief below.

Second Claim

Tortious Interference with Prospective Economic Advantage

42. Gordian realleges and incorporates by reference each of the allegations in Paragraphs 1 through 34 as if fully set forth herein.

43. Gordian has business relationships with thousands of facilities across the country, including many, if not all, of the facilities in which Vohra provides wound care physicians.

1 Gordian works diligently to maintain those business relationships, and is constantly working to
2 establish relationships with new facilities.

3 44. Vohra is and at all relevant times was aware of Gordian's ongoing business
4 relationships with these facilities.

5 45. Vohra has interfered with the relationships between Gordian and its current
6 facilities by, among other things, making disparaging, demeaning and false statements to
7 denigrate Gordian and Gordian's clinical specialists, ordering wound care dressings and supplies
8 without authorization when Gordian had a history of providing those dressings to residents of
9 those facilities, using coercive tactics and unlawful and unfounded threats designed to induce
10 those facilities to stop doing business with Gordian and instead order wound care dressings and
11 supplies from Vohra's Dressing Dispensing Program, falsely claiming that Gordian was ordering
12 excessive dressings and supplies, and providing its physicians illegal monetary incentives to
13 order dressings in violation of anti-kickback statutes.

14 46. Vohra's actions are improper, intentional, malicious, unjustified, and made with
15 the purpose of inducing facilities to terminate or not continue their respective business
16 relationships with Gordian.

17 47. Vohra was and is aware that Gordian and these facilities are, or were, likely to do
18 business with each other in the future, and that Gordian anticipates, or anticipated, receiving
19 continued business from these facilities.

20 48. As a direct result of Vohra's unjustified interference with Gordian's business
21 relations, Gordian has suffered substantial monetary and non-monetary harm exceeding \$75,000,
22 including actual damages from lost business, damage to its reputation, and loss of goodwill.
23 Gordian is entitled to all remedies available under the law as set forth in its Prayer for Relief
24 below.

25 **Third Claim**

26 **Defamation**

27 49. Gordian realleges and incorporates by reference each of the allegations in
28 Paragraphs 1 through 34 as if fully set forth herein.

1 50. Vohra has published or communicated false and defamatory statements about
2 Gordian to third parties, including administrators and representatives of facilities with which
3 Gordian does business. These statements purported to be facts, including but not limited to
4 statements that Gordian cannot be trusted, that Gordian ordered excessive, unnecessary and
5 wasteful amounts of wound dressings and supplies, that Gordian's clinical specialists provide no
6 value, have no knowledge and are not competent, and that Gordian is "a sham."

7 51. Vohra knew the statements were false when made, and the publication or
8 communication was made intentionally, recklessly, and/or negligently.

9 52. Vohra has no privilege or justification for making these false and defamatory
10 statements.

11 53. The false and defamatory statements have harmed Gordian's reputation amongst
12 individuals, business entities, employees, and present and prospective clients. These false and
13 defamatory statements were made with the intent to disparage Gordian's standing in the surgical
14 wound care dressing market such that clients and potential clients would refuse to do business
15 with Gordian and instead do business with Vohra.

16 54. These false and defamatory statements have played a material and substantial part
17 in inducing others to refuse to do business with Gordian.

18 55. The false statements constitute defamation per se as they pertain to Gordian's
19 fitness for its trade, profession, or office and falsely convey the impression that Gordian
20 committed a crime by billing Medicare for excessive, unnecessary and wasteful amounts of
21 wound dressings and supplies.

22 56. These false and defamatory statements were portrayed as facts by Vohra, and
23 Vohra intended for those hearing or reading the statements to believe them to be true.

24 57. As a direct and proximate cause of Vohra's false and defamatory statements,
25 Gordian has suffered, and will continue to suffer, monetary damages in an amount to be proven
26 at trial but in excess of \$75,000, and irreparable harm to its business, reputation, and goodwill.

27 58. Based on the intentional, willful and malicious nature of Vohra's actions, Gordian
28 is entitled to recover punitive and exemplary damages and reasonable attorney's fees and costs

1 incurred in connection with this action.

2 **Fourth Claim**

3 **False Advertising in Violation of the Lanham Act**

4 59. Gordian realleges and incorporates by reference each of the allegations in
5 Paragraphs 1 through 34 as if fully set forth herein.

6 60. Vohra, a direct competitor of Gordian and engaged in interstate commerce in
7 respect to the sale and marketing of wound dressings and supplies, has, in connection with the
8 commercial advertising or promotion of its own Dressing Dispensing Program, publicly
9 disseminated nationwide to consumers of wound dressings, including Gordian's existing and
10 potential customers, false descriptions of fact and/or false representations of fact that Gordian
11 has engaged in criminal acts and Medicare fraud.

12 61. Vohra made these representations about Gordian in multiple states throughout the
13 country with the design to influence, and in fact have influenced, the purchasing decisions with
14 respect to wound dressings and supplies by Gordian's existing and prospective customers.

15 62. These false descriptions of fact and/or false representations of fact misrepresent
16 the nature, characteristics, and quality of Gordian's goods, services and commercial activities in
17 violation of 15 U.S.C. § 1125(a).

18 63. Vohra's advertising about its own products and services implicitly conveys false
19 claims about the legality of Vohra's services and Medicare billing arrangements, and as such are
20 false and misleading or false by necessary implication in violation of 15 U.S.C. § 1125(a).

21 64. As a direct and proximate result of Vohra's actions and misrepresentations,
22 Gordian's existing and prospective customers in multiple states have been deceived or are likely
23 to be deceived in a material way about Gordian's products and/or services, and are now or will
24 likely be reluctant to do business with Gordian or have stopped or will likely stop doing business
25 with Gordian.

26 65. As a direct and proximate result of Vohra's public dissemination of false
27 descriptions of fact and false representations of fact, Gordian has suffered, and will continue to
28 suffer, significant monetary damages subject to proof and irreparable harm to its business,

1 reputation, and goodwill.

2 **Fifth Claim**

3 **Deceptive Trade Practices Under N.R.S. § 598.0915**

4 66. Gordian realleges and incorporates by reference each of the allegations in
5 Paragraphs 1 through 34 as if fully set forth herein.

6 67. In the course of conducting its business, Vohra willfully, maliciously, and
7 knowingly made false, misleading, and disparaging representations of fact about Gordian's
8 goods services and/or business.

9 68. As a direct and proximate result of Vohra's actions, Gordian has suffered, and
10 will continue to suffer, monetary damages in an amount subject to proof but in excess of
11 \$75,000, and has suffered and will continue to suffer irreparable harm to its business, reputation,
12 and goodwill.

13 **Sixth Claim**

14 **Unfair Competition**

15 69. Gordian realleges and incorporates by reference each of the allegations in
16 Paragraphs 1 through 34 as if fully set forth herein.

17 70. Vohra's conduct as described above, including but not limited to making
18 disparaging, demeaning and false statements to denigrate Gordian and Gordian's clinical
19 specialists, ordering wound care dressings and supplies without authorization when Gordian had
20 in place contracts to provide those dressings to residents of those facilities, using coercive tactics
21 and unlawful and unfounded threats designed to induce those facilities to break their contracts
22 with Gordian and instead order wound care dressings and supplies from Vohra's Dressing
23 Dispensing Program, falsely claiming that Gordian was ordering excessive dressings and
24 supplies, and providing its physicians illegal monetary incentives to order dressings in violation
25 of anti-kickback statutes, has unfairly put Gordian, as an honest, law-abiding competitor, at a
26 significant competitive disadvantage.

27 71. Vohra's conduct is contrary to honest practice in commercial matters, and its
28 conduct is likely to confuse or deceive the public.

72. Vohra's actions are willful, malicious, deceptive, and fraudulent.

73. Vohra's actions were knowingly taken with the intent of obtaining an unfair competitive advantage over Gordian for the marketing of wound care dressings and supplies to facilities with which Gordian does business.

74. As a direct and proximate result of Vohra's unfair business practices, Gordian has suffered substantial monetary and non-monetary harm exceeding \$75,000, including actual damages from lost business, damage to its reputation, and loss of goodwill. Gordian is entitled to all remedies available under the law, as set forth in its Prayer for Relief below.

Prayer for Relief

Wherefore, Counter-Claimant Gordian Medical, Inc., dba American Medical Technologies, prays for judgment against Counter-Defendant Vohra Wound Physicians Management, Inc., as follows:

1. Preliminary and permanent injunctive relief enjoining Vohra, and its officers, directors, principals, agents, servants, employees, licensees, successors and assigns, and all those acting in concert with any of them from making and/or publishing any false, defamatory, disparaging, or demeaning statements about Gordian or Gordian's clinical specialists, including but not limited to statements that Gordian has or is engaged in criminal acts or Medicare fraud;

2. Actual damages in an amount according to proof, including but not limited to, Gordian's lost business and Vohra's unjustly received revenues;

3. Corrective advertising, as permitted by statute;

4. Punitive damages in an amount sufficient to punish Vohra and deter it from engaging in such similar unlawful conduct in the future;

5. Reasonable attorneys' fees and costs incurred by Gordian in defending this lawsuit and prosecuting this counterclaim;

6. Pre-judgment and post-judgment interest in accordance with statute; and

7. Such further and other relief as the Court may deem just and appropriate.

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DEMAND FOR TRIAL BY JURY

Gordian hereby demands trial by jury for all questions for which trial by jury is authorized, both in Vohra's complaint and in Gordian's counterclaim.

DATED: May 11, 2020

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